

1 **14**

2 TRUDI G. MANFREDO, Bar No. 166474
3 Chapter 7 Trustee
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6 Telephone: (559) 449-9069
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8 **UNITED STATES BANKRUPTCY COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10 **FRESNO DIVISION**

11
12 In the Matter of) Case No. 11-14827-B-7
13) DC#: TMT-2
14 MAURICIO DE LEON HERNANDEZ)
15 and TAMMY MARIE HERNANDEZ,) Date: October 12, 2011
16) Time: 10:00 a.m.
17 Debtors.) Dept. B, Courtroom 12, Fresno
18) The Honorable W. Richard Lee

19 **TRUSTEE'S MOTION OBJECTING TO DEBTORS' AMENDED**
20 **CLAIM OF EXEMPTIONS AND MOTION FOR TURNOVER**

21 Trudi G. Manfredo, Trustee of the above referenced
22 bankruptcy estate, objects to the Debtor's Amended Claim of
23 Exemption and respectfully represents as follows:

24 1. Debtors filed a bankruptcy case under Chapter 7 of the
25 Bankruptcy Code on April 26, 2011.

26 2. Two assets of the bankruptcy estate are a 2003
27 Chevrolet Tahoe and a 2005 Dodge Ram.

28 3. Debtors' Amended Claim of Exemption claimed the 2005
Dodge Ram as exempt in the amount of \$4,850.00 under CCP section
704.060. Trustee is objecting the Debtors' amended claim of

1 exemption for the 2005 Dodge Ram as a tool of the trade on the
2 basis that the vehicle is not a tool of the trade and on the
3 basis of bad faith. Attached hereto for the Court's convenience
4 is a true and correct copy of Debtors' amended Schedules B and
5 C.

6 4. Debtors' Meeting of Creditors was first scheduled for
7 May 26, 2011. Debtor and counsel appeared at this meeting;
8 however, the 11 U.S.C. § 521 required documents were not timely
9 provided so the case was continued to June 20, 2011. On that
10 date, the Debtors were examined. It appeared that there were
11 non exempt assets in the case and that Debtors had substantially
12 undervalued the two vehicles in question; however the exemptions
13 had been claimed under both CCP §703 and §704. The case was
14 again continued to July 18, 2011 for the exemptions to be
15 amended.

16 5. Debtors amended both Schedules B and C. On Schedule
17 B, the value of the 2003 Chevrolet Tahoe had been reduced from
18 \$5,000.00 on the original schedule to \$3,825.00 and the 2005
19 Dodge Ram had been reduced from \$7,000.00 in the original
20 schedule to \$4,975.00. Also, for the first time the Dodge Ram
21 was claimed exempt as a tool of the trade. For the Court's
22 convenience, Debtors' original schedules B and C are attached.

23 6. At the continued meeting of creditors, Debtor
24 testified and Schedule I reflects that he is not self employed.
25 Debtor further testified that he uses the Dodge Ram to drive to
26 and from work.

27 7. The continued meeting of creditors was scheduled for
28 September 6, 2011, at which time it was concluded.

8. Trustee's agent, Jerry Gould, who is an experienced auctioneer, examined the vehicles and believes that the 2003 Chevrolet Tahoe would sell at auction for \$7,500.00 and the Dodge Ram would sell for \$12,500.00. Even with Debtors' claimed exemptions there is equity in these vehicles for the bankruptcy estate.

9. According to Debtors' schedules, both vehicles are unencumbered.

10. On August 10, 2011, Trustee wrote to the Debtors demanding turnover of these vehicles. No reply was received.

11. Trustee requests that the Court sustain her objection to Debtors' Amended Claims of Exemption and that the Court order Debtors to turn over the two vehicles.

WHEREFORE Trustee prays as follows:

1. That the Court grant her motion;

2. That the Court sustain her objection to Debtors' claim of exemption with regard to the 2005 Dodge Ram;

3. That the Court order Debtors to immediately turnover the 2005 Dodge Ram and the 2003 Chevrolet Tahoe to the Trustee forthwith;

4. For such other and further relief as is just and proper.

Dated: 9-8-11

/s/ TRUDI G. MANFREDO
Trudi G. Manfredo
Chapter 7 Trustee

In Re: HERNANDEZ, Mauricio De Leon & Tammy MarieCase No. 11-14827-B-7**Debtor**

(if known)

SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "X" in the appropriate position in the column labeled "None". If additional space is needed in any category, attach a separate sheet properly identified with the same case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint or Community". If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state the person's name and address under "Description and Location of Property".
If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

Type of Property	None	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property Without Deducting Any Secured Claim or Exemption
1. Cash on hand.		Cash from Wages	C	88
2. Checking, savings or other financial accounts, CD's, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses or cooperatives.		Checking Account Wih Bank of America Los Banos Branch	J	1,496
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, including audio, video, and computer equipment.		Household Furniture & Fixtures	C	6,400

In Re: HERNANDEZ, Mauricio De Leon & Tammy MarieCase No. 11-14827-B-7**Debtor**

(if known)

Type of Property	None	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property Without Deducting Any Secured Claim or Exemption
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6. Wearing apparel.		Family Clothing	C	800.00
7. Furs and jewelry.		Small Jewelry	C	200.00
8. Firearms and sports, photographic, and other hobby equipment.	X			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10. Annuities. Itemize and name each issuer.	X			
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars.	X			
12. Interest in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.	X			

In Re: HERNANDEZ, Mauricio De Leon & Tammy MarieCase No. 11-14827-B-7**Debtor**

(if known)

Type of Property	None	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property Without Deducting Any Secured Claim or Exemption
13. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and non-negotiable instruments.	X			
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owing debtor including tax refunds. Give particulars.	X			
19. Equitable or future interest, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			
20. Contingent and noncontingent interests in real estate of a decedent, death benefit plan, life insurance policy, or trust.	X			

In Re: HERNANDEZ, Mauricio De Leon & Tammy MarieCase No. 11-14827-B-7**Debtor**

(if known)

Type of Property	None	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property Without Deducting Any Secured Claim or Exemption
21. Other contingent or unliquidated claims of every nature, including tax refunds, counter-claims of the debtor, and rights to setoff claims. Give estimated value of each.	X			
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.		2003 Chevy Tahoe	C	5,000.00
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.	X			

In Re: HERNANDEZ, Mauricio De Leon & Tammy MarieCase No. 11-14827-B-7**Debtor**

(if known)

Type of Property	None	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property Without Deducting Any Secured Claim or Exemption
29. Machinery, fixtures, equipment, and supplies used in business.	X			
30. Inventory.	X			
31. Animals.	X			
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize.		2005 Dodge Ram	C	7,000.00
Total				\$20,984.00

In Re: HERNANDEZ, Mauricio De Leon & Tammy MarieCase No. 11-14827-B-7**Debtor**

(if known)

SCHEDULE C - PROPERTY CLAIMED AS EXEMPTDebtor claims the exemptions to which debtor is entitled under:
(Check one box)☐ Check if debtor claims a homestead exemption that exceeds
\$146,450.*

- ☒ 11 U.S.C. § 522(b)(2)
☐ 11 U.S.C. § 522(b)(3)

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Value of Property Without Deducting Exemption
Cash from Wages	704.070	88	88
Checking Account Wih Bank of America Los Banos Branch	704.070	1,496	1,496
Household Furniture & Fixtures	704.020	6,400	6,400
Family Clothing	704.020	800.00	800.00
Small Jewelry	704.040	200.00	200.00

In Re: HERNANDEZ, Mauricio De Leon & Tammy MarieCase No. 11-14827-B-7**Debtor**

(if known)

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Value of Property Without Deducting Exemption
2003 Chevy Tahoe	703.140 (b)(5)	5,000.00	5,000.00
2005 Dodge Ram	703.140 (b)(5)	7,000.00	7,000.00

In re HERNANDEZ, Mauricio D & Tammy M
DebtorCase No. 11-14827-B-7
(If known)*Amended*
SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand.		Cash from Wages	C	88.00
2. Checking, savings or other financial accounts, certificates of deposit or shares in banks, savings and loan, thrift, building and loan, and home- stead associations, or credit unions, brokerage houses, or cooperatives.		Checking account with Bank of America, Los Banos Branch	C	1,496.00
3. Security deposits with public util- ities, telephone companies, land- lords, and others.	X			
4. Household goods and furnishings, including audio, video, and computer equipment.		Household Furniture & Fixtures	C	6,400.00
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6. Wearing apparel.		Family Clothing	C	800.00
7. Furs and jewelry.		Small Jewelry	C	200.00
8. Firearms and sports, photo- graphic, and other hobby equipment.	X			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10. Annuities. Itemize and name each issuer.	X			
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)	X			

In re HERNANDEZ, Mauricio D & Tammy M Case No. 11-14827-B-7
 Debtor (If known)

Amended
SCHEDULE B - PERSONAL PROPERTY
 (Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.		Reirement pension account	C	31,540.00
13. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and non-negotiable instruments.	X			
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	X			
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A -- Real Property.	X			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			

In re HERNANDEZ, Mauricio D & Tammy M Case No. 11-14827-B-7
Debtor*Amended* (If known)**SCHEDULE B - PERSONAL PROPERTY**

(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.		2003 Chevy Tahoe	C	3,825.00
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.	X			
29. Machinery, fixtures, equipment, and supplies used in business.	X			
30. Inventory.	X			
31. Animals.	X			
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize.		2005 Dodge Ram	C	4,975.00
continuation sheets attached Total▶				\$ 49,324.00

(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)

In re HERNANDEZ, Mauricio & Tammy
DebtorCase No. 11-14827-B-7
(If known)*Amended***SCHEDULE C - PROPERTY CLAIMED AS EXEMPT**Debtor claims the exemptions to which debtor is entitled under:
(Check one box)

- ☒ 11 U.S.C. § 522(b)(2)
☐ 11 U.S.C. § 522(b)(3)

☐ Check if debtor claims a homestead exemption that exceeds \$146,450.*

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION
Cash from wages	704.070	88.00	88.00
Checking account with Bank of America Los Bano	704.070	1,496.00	1,496.00
Household Furniture & Fixtures	704.020	6,400.00	6,400.00
Family Clothing	704.020	800.00	800.00
Small Jewelry	704.040	200.00	200.00
2005 Chevy Tahoe	704.010	2,725.00	3,825.00
2005 Dodge Ram	704.060	4,850.00	4,975.00
Retirement pension account	704.115	31,540.00	31,540.00

* Amount subject to adjustment on 4/1/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.